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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,129	04/01/2004	Jerome Tomlin	TOMLIN-2	9623

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EXAMINER

MATHEW, FENN C

ART UNIT PAPER NUMBER

3764

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/816,129

Applicant(s)

TOMLIN, JEROME

Examiner

Fenn C. Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2 and 5-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 5-13 is/are rejected.
- 7) ☒ Claim(s) 6, 10 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/23/2006 has been entered.

### ***Claim Objections***

2. Claims 6, 10, and 12 are objected to because of the following informalities:
- In claim 6, line 1, the phrase 'said fastening member' lacks positive antecedent basis. Applicant should insert the phrase 'further comprising a fastening member' prior to the word 'wherein'.
  - In claim 10, line 3, the phrase 'said forearm securement' should read 'said forearm securement band', in order to overcome antecedent basis deficiencies.
  - In claim 12, line 1, the phrase 'said fastening member' lacks positive antecedent basis. Applicant should insert the phrase 'further comprising a fastening member' prior to the word 'wherein'.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

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3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 2 and 5-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Netti (U.S. 4,330,120) in view of Jackson, Jr. (U.S. 3,759,510). Referring to claim 8, Netti discloses a device capable of conditioning arms and upper body muscles of user comprising an unweighted glove section ((12) note that when weights are removed from (23), the device comprises an unweighted glove section), a forearm section (13, 14), the glove and forearm sections comprising one or more pliable members (col. 3, lines 24-26 and col. 3, lines 64-68), a weight comprising a plurality of weights located, with the forearm section, the weight enclosed by a pliable material (col. 3, lines 64-68) and a securement band (37) extending around the weight. Netti fails to teach the specific nature of the weights integrated with the forearm section. Jackson, Jr. teaches in col. 3, lines 4-15 that it is desirable in an analogous device to utilize sand and/or iron pellets as user worn weights due to their flexible properties. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the Netti device with particulate weights as taught by Jackson, Jr. in order to avoid undue stiffening in the pockets, allowing more flexibility. The modified Netti would be flexible and would be capable of conforming generally to the shape and dimensions of the user's wrist (as the user bends the wrist, so too would the weights due to their flexible nature thus conforming to the shape of the wrist). Referring to claim 2, Netti teaches the weight attached to the forearm section via a pocket (col. 3, line 63 – col. 4 line 5). Referring to claim 5, Netti teaches a fastening member comprising a pair of adjustable straps (37)

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that connect one side of the wrist and forearm sections to the other side of the wrist and forearm sections. Referring to claim 6, Netti teaches a fastening member comprising a zipper (15) that connects one side of the wrist and forearm section to another side. Referring to claim 7, Netti fails to teach closed ended tubular finger receiving members. Jackson, Jr. teaches a glove having closed ended tubular finger receiving members. It would have been obvious to one of ordinary skill in the art at the time of invention to have the tubular finger receiving members of Netti be closed at their ends as taught by Jackson, Jr. in order to protect the fingertips of a user. Referring to claim 9, Netti teaches the securement band extending around the weights in a flexible manner (as seen in figure 2 and 3). Referring to claim 10, Netti teaches a forearm securement strap (37) disposed on the forearm section with the weight being positioned between the forearm securement strap and glove section. Referring to claim 11, Netti teaches the forearm section extending from the glove section along a forearm of a user. The limitation of the forearm section extending over less than half of the forearm of the user is relative to the size of the user, as a glove designed for a shorter individual with shorter arms would extend over a shorter length of the forearm of a user with similar build who has much longer arms. Referring to claim 12, Netti teaches the fastening member comprising one or more adjustable straps that connect one side of the wrist and forearm section to the other side of the wrist and forearm section. Referring to claim 13, Netti discloses a device capable of conditioning arms and upper body muscles of user comprising an unweighted glove section ((12) note that when weights are removed from (23), the device comprises an unweighted glove section), a forearm

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section (13, 14), the glove and forearm sections comprising one or more pliable members (col. 3, lines 24-26 and col. 3, lines 64-68), a weight comprising a plurality of weights located, with the forearm section, the weight enclosed by a pliable material (col. 3, lines 64-68) and a fastening member (37) comprising an adjustable strap extending around the weight whereby the weight is comfortably and securely secured to the wrist of a user. Netti fails to teach the specific nature of the weights integrated with the forearm section. Jackson, Jr. teaches in col. 3, lines 4-15 that it is desirable in an analogous device to utilize sand and/or iron pellets as user worn weights due to their flexible properties. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the Netti device with particulate weights as taught by Jackson, Jr. in order to avoid undue stiffening in the pockets, allowing more flexibility. The modified Netti would be flexible and would be capable of conforming generally to the shape and dimensions of the user's wrist (as the user bends the wrist, so too would the weights due to their flexible nature thus conforming to the shape of the wrist).

### ***Response to Arguments***

5. Applicant's arguments filed 02/23/2006 have been fully considered but they are not persuasive. Applicant is reminded that claims are examined in their broadest reasonable light, and that limitations from the specification are not read into the claims themselves. Examiner respectfully points out that Netti states in col. 4, lines 35-40 that the weights extend from the wrist down the forearm. The fact that they are located on the posterior of the glove does not preclude the weights of Netti as modified by Jackson,

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Jr. above from conforming to the shape and dimensions of the wrist, as bending of the wrist would result in bending of the pockets containing particulate weights due to their flexible nature. The phrase 'is able to conform generally to the shape and dimensions of a user's wrist' does not explicitly limit the positioning of the weights. Applicant has not claimed that the weights encircle the wrist. The modified Netti meets the claimed limitations as discussed above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fenn C. Mathew

May 5, 2006